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No. 87-1119

Supreme Court, U.S.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

RUSSELL F. PARAVECCHIO, D.M.D.,
Petitioner,

v.

MEMORIAL HOSPITAL OF LARAMIE COUNTY,
and
DEPAUL HOSPITAL,
Respondents.

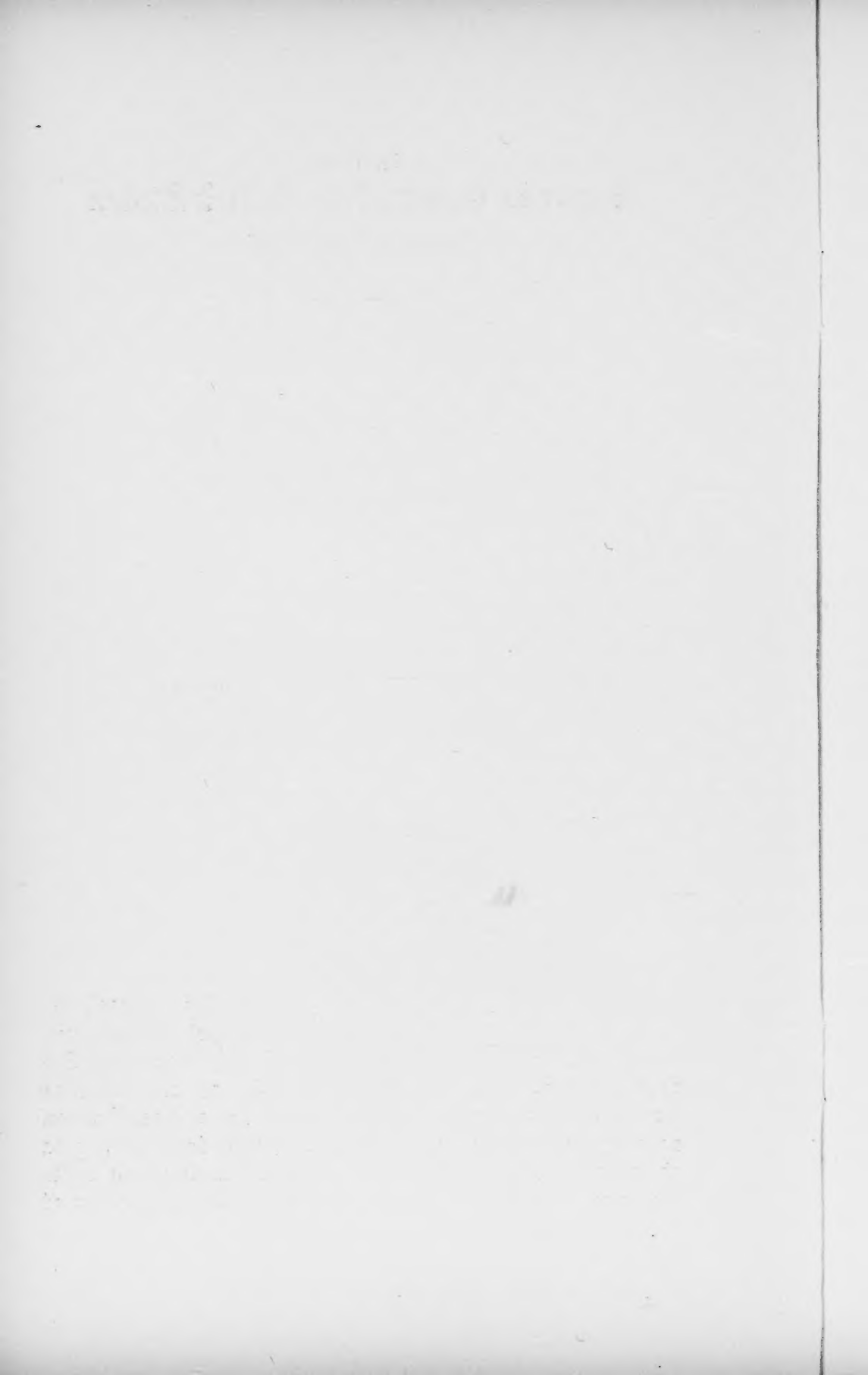
On Petition for a Writ of Certiorari to the
Supreme Court of the State of Wyoming

REPLY BRIEF

BRUCE A. SALZBURG *
FREUDENTHAL, SALZBURG, BONDS &
RIDEOUT, P.C.
314 East 21st Street
Cheyenne, Wyoming 82003-0387
(307) 634-2240

JONATHAN B. SALLET
MILLER, CASSIDY, LARROCA & LEWIN
2555 M Street, N.W., Suite 500
Washington, D.C. 20037
(202) 293-6400

* Counsel of Record



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REPLY BRIEF

In his opening brief, the petitioner, Dr. Russell F. Paravecchio, demonstrated that this Court should consider (and reverse) the decision of the Wyoming Supreme Court that (i) failed to ask, at all, whether legitimate state goals are furthered by a classification scheme that bars a fully-qualified person from acting as an anesthesiologist, and (ii) relied on undisclosed facts that are contravened by the uncontroverted allegations of the complaint.

In their Joint Brief in Opposition, the respondents rely on four arguments, none of which supports denial of Dr. Paravecchio's petition. *First*, the respondents contend that this case turns on a question of state law and they cite state law cases that did not consider any federal constitutional argument. *See Spiro v. Highlands General Hospital*, 489 So.2d 802 (Fla. App. 1986); *Everett v. State*, 661 P.2d 588 (Wash. 1983). But the federal constitutional claim was raised in this case and decided, even if erroneously, by the Wyoming Supreme Court. App. at 15a-16a.

Second, the respondents assert that the constitutional issue is not important and that its impact is limited to Wyoming alone. But the opposite is true. As demonstrated by the Motion for Leave to File Brief Amici Curiae, the exclusion from the practice of anesthesiology of fully-certified dentists is an issue of national concern. The Wyoming classification is only symptomatic of a larger problem concerning prohibitions imposed on fully-qualified medical health professionals. Thus, contrary to the suggestion of the respondents, the ability of consumers to seek fully-qualified health care is an issue of significant—and continuing—importance.

Third, the respondents contend that a factual distinction exists between dentists and physicians that, under the traditional "rational basis test," supports the state court decision. In this case, however, the only relevant "facts" are the allegations of the complaint, which must be taken as true, that Dr. Paravecchio is completely and fully qualified to serve as an anesthesiologist. Those facts completely refute any suggested compromise to public safety. That petitioner is authorized to practice general anesthesiology at a federal hospital in Cheyenne, but not a few blocks away at respondent hospitals, is eloquent evidence by itself of the fundamental irrationality of the classification.

The respondents, like the state court, merely assert, in a conclusionary fashion, that these facts are insufficient. But, also like the state court, they completely fail to provide any rational explanation for a licensing statute that bars a fully-qualified dentist from obtaining the necessary license.¹ Petitioner has been educated, trained and certified to be *equal* to physicians in the delivery of anesthesiological services. Contrary to the "*almost* equally strong claim to favored treatment" discussed in *Mathews v. Diaz*, 426 U.S. 67, 83 (1976) (emphasis added), petitioner asserts, and he is entitled to prove, that mere labeling does not create a rational distinction sufficient to support the classification at issue here.

Fourth, the respondents assert that Dr. Paravecchio, despite his special training and residency certification may properly be lumped together with dentists who have not received such training. But it is precisely because of this training that petitioner asserts his constitutional claim. Moreover, oral and maxillofacial surgeons, a subclass of residency trained dentists also few in number, are recognized for their equality of training and are privileged by respondent hospitals to practice their speciality, which also includes non-dental procedures nowhere found in the Wyoming Dental Practice Act. Thus, the respondents' contention in this instance only demonstrates the irrationality of the legislative scheme.

Respondents' approach to this case has been to consistently assert, without proof, a factual distinction between petitioner and physicians, while simultaneously laboring to exclude information and argument which

¹ More importantly, respondents here assert factual arguments which they did not, and could not, prove at the trial level. For example, respondents now improperly assert a factual argument denying that the Board of Dental Examiners issued the ruling alleged in the Amended Complaints. Respondents' Brief in Opposition at p. 2.

belies their position. Their inability to muster any reasonable defense of the State court decision thus demonstrates that the Wyoming Supreme Court substantially departed from the mode of analysis required by the Equal Protection Clause.

CONCLUSION

This petition brings to the Court an important question that concerns the adequate provision of health care by qualified professionals and that demonstrates a fundamental misunderstanding of the Equal Protection Clause by a state supreme court. The Petition for Writ of Certiorari should, therefore, be granted.

Respectfully submitted,

BRUCE A. SALZBURG *
FREUDENTHAL, SALZBURG, BONDS &
RIDEOUT, P.C.
314 East 21st Street
Cheyenne, Wyoming 82003-0387
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1. The first part of the paper is devoted to a general
discussion of the problem of the existence of solutions
of the system of equations (1) for arbitrary values of
the parameters α and β . It is shown that the system
has solutions for all values of the parameters α and β if
the conditions (2) are satisfied.